FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Writ Petition No. 632/2007
(Smt.Tulsabai Pralhadrji Shewale & anr. Vs. Radhanand Gruha Nirman Sahakari Sanstha & anr.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. V.K. Gulhane, Adv. for the petitioners.
Mr. A.Z. Jibhkate, Adv. for R-1.
Smt. B.H. Dangare, Addl. G.P. for R-2.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 3rd DECEMBER, 2007.

Heard Shri Gulhane for the petitioners, Shri Jibhkate for the respondent no.1, and Mrs. Dangare, the learned Addl. G.P. for the respondent no. 2.

By this petition, the petitioners have impugned the order passed by the Ad hoc Additional District Judge, Nagpur, on 18/12/2006 below Exh.33 rejecting the amendment application filed by the petitioners.

Few facts giving rise to the controversy in question are stated thus-

The petitioners are the original defendants. A suit was filed by the plaintiff/ respondent no.1 for specific performance of contract of sale of suit property. It was pleaded by the respondent no.1 in the civil suit that the plaintiff/ respondent no.1 was a registered Society. The aforesaid pleading was

denied by the defendants in their written statement. It was pleaded by the defendants that the respondent no.1 was not a registered society. In view of the denial by the defendants on a material fact, a necessary issue was framed by the trial Court placing burden on the plaintiff to prove whether the cooperative housing society was a registered one. After framing of the issue, the parties tendered evidence to substantiate their respective cases. The trial Court, after appreciating the material on record, held that the plaintiff had succeeded in proving that the plaintiff-Society was registered as a Cooperative Housing Society. Though the Society was de-registered by the order of the Registrar of the Cooperative Societies, the respondent no.1 had preferred an appeal against the order passed by the Assistant Registrar and the State had granted a stay to the effect and operation of the order passed by the Assistant Registrar. The petitioners then filed an application for permission to amend the written statement under the provisions of Order VI, Rule 17 of the Code of Civil Procedure. It was stated in the amendment application that the petitioners had sent one of their friends to Mumbai to find out the status of the appeal filed by the respondent no.1-Society before the Minister for Cooperation and it was found on enquiry that no such appeal was pending before the Hon'ble Minister. It is further

stated in the application that the authorities under the Maharashtra Cooperative Societies Act also informed the petitioner no.2 that the respondent no.1 was not a registered Cooperative Society. In view of the aforesaid statements made in the amendment application, the petitioners sought permission to amend the written statement so as to incorporate the aforesaid facts in the written statement. In the proposed amendment, it is stated by the petitioners that the petitioner no.2, through his friend, could not get any information about the alleged appeal and, therefore, the petitioner no.2 could not know the present status of the plaintiff-Society. It is then stated in the amendment application that the proposed amendment did not change the nature of the defence of the defendants nor would it cause any prejudice to the rights of the plaintiff. It was also stated in the proposed amendment that the defendants have chalked a lay out of 40 plots in the suit land and all the plots are allotted to different persons by executing the sale-deeds and agreement of sales.

Amendment application was strongly opposed by the plaintiff by filing a reply thereto. According to the plaintiff/respondent no.1, the statements of facts made in the proposed amendment required tendering of evidence and the defendants had not made any prayer for remand of

the matter to the trial Court. It was further stated in the reply that the amendment application was not supported by the necessary documents. It was stated in the reply that the issue as to whether the Society was registered or not, was rightly answered by the trial Court in favour of the plaintiff and the application was filed by the defendants merely to protract the matter in appeal.

After hearing the learned counsel for the parties and perusing the application for amendment and the reply filed thereto, the trial Court, by the impugned order dated 18/12/2006, rejected the application at Exh.33 with costs. The trial Court rightly observed that the petitioners had moved an application for amendment of memorandum of appeal, Exh. 20, on 12/12/2005, which was rejected on 28/7/2006. The trial Court rightly held that the amendment application was not supported by any document and there was nothing on record to show that the plaintiff-Society was de-registered on the date of filing of the amendment application. The Court further correctly observed that the proposed amendment which pertains to the non-functioning of the Society was not necessary for deciding the lis between the parties.

It appears that the impugned order passed by the Ad hoc Additional District Judge, Nagpur, on 18/12/2006 is just and proper. The first appellate

Court has rightly rejected the application for amendment of the written statement as the defendants had not produced any material on record in support of the proposed amendment. The petitioners had neither produced the agreement of sale or the sale deeds before the first appellate Court, nor had the petitioners produced the order passed by the Minister for Cooperation by which the appeal was disposed of. It appears that the trial Court had rejected the amendment application as the proposed amendment, specially in paragraph 10-A, was based on hearsay facts and was not supported by any documentary evidence. The facts stated in paragraph no. 10-C of the proposed amendment, pertains to the subsequent events relating to the transfer of the plots during the pendency of the litigation. The facts stated in the proposed amendment at paragraph 10-C were not the facts which were material for deciding the issue in question. No fault can, therefore, be found with the impugned order passed by the first appellate Court. The petitioners have also not stated any reason for belatedly moving the amendment application before the first appellate Court.

In the facts and circumstances of the case, there is no reason whatsoever to interfere with the impugned order passed by the first appellate Court rejecting the application for amendment of the

written statement.

Writ petition, therefore, fails and is dismissed with no order as to costs.

JUDGE

RMP